

ALJ Sanders issued an Order on January 2, 2013, requiring Mr. Taff to pay the costs and fees of Appino & Biggs Reporting Service for reporting and transcribing the Motion on Attorney Fees Hearing held on May 9, 2012.

In his application for review, Mr. Taff argues that he should not have to pay the court reporter fees because: (1) he did not file the motion to determine attorney fees, (2) the ALJ's January 2, 2013, Order was issued seven months after her June 4, 2012, Order concerning attorney fees, (3) no provision concerning payment of the court reporter fees was placed in the June 4, 2012, Order and that order is now final and (4) there is no provision in the Kansas Workers Compensation Act authorizing the January 2, 2013, Order.

In his brief, Mr. Manson took the position that a hearing was required in order to effect a split of attorney fees between him and Mr. Taff. Mr. Manson indicated he has already paid one-half of the cost of the original transcript of the May 9, 2012, hearing plus a copy for him. Mr. Manson suggests that a fair resolution would be to require Mr. Taff and him to each pay one-half of the court reporter fees associated with the May 9, 2012, hearing and urges the Board to make such a ruling. Mr. Manson requests that if the Board adopts his proposal, that he be given credit for the costs his firm has already paid.

The issue before the Board is:

Did the ALJ err by issuing an Order requiring Mr. Taff to pay the costs and fees of Appino & Biggs Reporting Service for reporting and transcribing the Motion on Attorney Fees Hearing held on May 9, 2012?

#### **FINDINGS OF FACT**

After reviewing the record and considering the parties' arguments, the Board finds:

Claimant was initially represented by Mr. Taff. Mr. Taff was discharged by claimant on February 28, 2011. On March 1, 2011, Mr. Taff sent a letter to ALJ Sanders, claiming a lien for attorney fees in the amount of \$2,250. Mr. Manson began representing claimant on March 25, 2011. Claimant settled her claim on May 21, 2012, and the SALJ approved attorney fees of \$5,625.

Mr. Taff and Mr. Manson could not reach an agreement on dividing the attorney fees. Mr. Manson filed a motion on April 18, 2012, to determine how the attorney fees should be apportioned. A hearing was held on May 9, 2012. Only Mr. Taff and Mr. Manson appeared. On June 4, 2012, ALJ Sanders issued an Order finding Mr. Taff was entitled to \$1,350. He appealed. On December 19, 2012, the Board affirmed ALJ Sanders' June 4, 2012, Order. At the May 9, 2012, attorney fees hearing, neither the parties nor the ALJ addressed the issue of costs including payment of the court reporter fees. Neither ALJ Sanders' Order nor the Board's Order addressed the issue of who should pay the costs, including the court reporter fees for reporting and transcribing the May 9, 2012, hearing.

In his brief to the Board, Mr. Manson indicted that on May 30, 2012, he paid \$277.36 to Appino & Biggs, which was one-half of the cost of the original transcript of the May 9, 2012, hearing plus a copy for Mr. Manson.

On January 2, 2013, without a motion being filed by Mr. Taff or Mr. Manson and without a hearing, ALJ Sanders ordered Mr. Taff to pay the court reporter costs and fees for reporting and transcribing the May 9, 2012, Motion on Attorney Fees Hearing. Mr. Taff appeals. From the Order of ALJ Sanders, it is impossible to determine whether she intended for Mr. Taff to pay the entire court reporter's bill or only the remaining balance after Mr. Manson's payment.

#### **PRINCIPLES OF LAW AND ANALYSIS**

ALJ Sanders issued her January 2, 2013, Order without either party filing a motion to determine who should be required to pay the court reporter costs and fees and without conducting a hearing on the issue. There is nothing in the record to indicate that ALJ Sanders sought input by the parties before issuing her Order requiring Mr. Taff to pay the court reporter costs and fees for the May 9, 2012, hearing.

"The essential elements of due process of law in any judicial hearing are notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case."<sup>1</sup> Mr. Taff was not given an opportunity to be heard on the issue of payment of the court reporter costs and fees. Due process dictates that he should be afforded that opportunity.

Mr. Manson suggested a commonsense approach on how the dispute might be resolved. However, common sense does not always prevail in matters such as this. Hopefully, Mr. Taff and Mr. Manson can reach an amicable resolution on payment of the court reporter costs and fees. The parties are also reminded that they can, pursuant to K.S.A. 44-5,117, mediate this issue. The Board remands this matter to ALJ Sanders to conduct a hearing to determine payment of the court reporter costs and fees. If either of the parties is not satisfied with ALJ Sanders' decision, that party may appeal the matter to the Board.

**WHEREFORE**, the Board remands this matter to ALJ Sanders to conduct a hearing and issue an Order on the issue of payment of the court reporter costs and fees.

**IT IS SO ORDERED.**

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<sup>1</sup> *Collins v. Kansas Milling Co.*, 207 Kan. 617, 620, 485 P.2d 1343 (1971).

Dated this \_\_\_\_ day of March, 2013.

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BOARD MEMBER

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